



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,388	03/30/2004	Gilles Gutierrez	GEI-088-DIV.	7625
47888	7590	03/18/2008		
HEDMAN & COSTIGAN P.C. 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036				
EXAMINER				
YU, GINA C				
ART UNIT		PAPER NUMBER		
1617				
MAIL DATE		DELIVERY MODE		
03/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/813,388

Applicant(s)

GUTIERREZ ET AL.

Examiner

GINA C. YU

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of amendment filed on December 18, 2007. Claims 12-21 are pending. Claim rejections as indicated in the previous Office action dated December 18, 2007 are maintained for the reasons of record and reproduced below.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by “Synthesis from the sea” (Soap Perfumery and Cosmetics, Vol:72, No. 5, May 1999, p. 63).

Synthesis from the Sea discloses a method of using a purified extract from the sea algae, *Padina pavonica*, which is said to stimulate via keratinocytes the glucosaminoglycans, which maintains the skin's suppleness, firmness and elasticity. The reference teaches that the extract is formulated into cosmetics at a usage level of 2-5 % and protects the skin against free radicals and other irritations. See instant claims 15 and 19. The reference also teaches that the extract is suitable for a wide range of skin care products. See instant claims 17.

Claim 12 is directed to a method of “allowing consolidation of stratified architecture of epidermis and insuring the improvement of the mechanical properties of the skin without inducing any proliferation of the cells” by topically applying to skin a topical composition comprising an extract of *Padina pavonica*. Since the prior art already teaches that *Padina pavonica* extract is used in a topical formulation as an

antiaging agent, the claimed method is practiced every time the prior art is used as intended. While the present claim limits the population to those who are in need of the claimed method, examiner takes the position that all humans' skin age, and there is no particular group of patient that can be distinguished over others.

Claim 12 is directed to a method of using an extract of *Padina pavonica*, while the dependent claims, claims 13, 14, 16, 20, and 21, are directed to the process of making the extract. Regardless of how the skin care product is prepared, there is no distinction as to the actual method of how the extract is ultimately used for skin care. Thus no patentable weight is given to these claims.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Synthesis from the Sea as applied to claims 12-17 and 19-21 as above.

While the reference does not explicitly disclose the types of the cosmetic vehicles, the reference suggests that the extract is suitable for a wide range of skin care products. Creams, emulsions, gels, ect., as recited by instant claim 18, are typical types of skin care vehicles.

Given the teaching of Synthesis from the Sea that the *Padina pavonica* extract is incorporated to a wide range of cosmetic vehicles, it would have been obvious to a skilled artisan at the time of the present invention to formulate cosmetic compositions comprising the algae extract in the form of creams, emulsions, gels, etc.,. The skilled

Art Unit: 1617

artisan would have had a reasonable expectation of successfully producing skin care products with anti-aging properties.

Response to Arguments

Applicant's arguments filed on December 18, 2007 have been fully considered but they are not persuasive.

Applicant asserts that the *Padina pavonica* extracts of the prior art and the present invention do not possess the same properties. Specifically, applicant asserts that the prior art extract stimulates the synthesis of glucosaminoglycans, while the extract of the present invention is "based on different active ingredients" and leads to the differentiation of keratinocytes.

However, applicant provides no evidence to support the arguments. The prior art specifically indicates that the algae extract stimulates glucosaminoglycans via keratinocytes which in turn combats skin aging and provides the skin youthful appearance, which essentially achieves the same effects of the present method: Applicant states in the remarks that the present invention leads to "rejuvenating the skin". Applicant's argument that the prior art extract is somehow different and fails to teach the mechanism of the present invention is thus unpersuasive. Evidence supports that the prior art anticipates the present invention, and the outstanding rejections are proper.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1617